

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925

BURLINGTON NORTHERN RAILROAD COMPANY

and

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

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CASE NO. 110

AWARD NO. 110

On May 13, 1983 the Brotherhood of Maintenance of Way Employees (hereinafter the "Carrier") and the Burlington Northern Railroad Company (hereinafter the "Carrier") entered into an Agreement establishing a Special Board of Adjustment in accordance with the provisions of the Railway Labor Act. The Agreement was docketed by the National Mediation Board as Special Board of Adjustment No. 925 (hereinafter the "Board").

This Agreement contains certain relatively unique provisions concerning the processing of claims and grievances under Section 3 of the Railway Labor Act. The Board's jurisdiction was limited to disciplinary disputes involving employees dismissed from service. On September 28, 1987 the parties expanded the jurisdiction of the Board to cover employees who claimed that they had been improperly suspended from service or censured by the Carrier.

Although the Board consists of three (3) members, a Carrier Member, an Organization Member and a Neutral Referee, awards of the Board only contain the signature of the Referee and they are final and binding in accordance with the provisions of Section 3 of the Railway Labor Act.

Employees in the Maintenance of Way craft or class, who have been dismissed or suspended from the Carrier's service or who have been censured, may chose to appeal their claims to this Board. The employee has a sixty (60) day period from the effective date of the discipline to elect to handle his/her appeal through the usual channels (Schedule Rule 40) or to submit the appeal directly to this Board in anticipation of receiving an expedited decision. An employee who is dismissed, suspended or censured may elect either option. However, upon such election that employee waives any rights to the other appeal procedures.

The Agreement further establishes that within thirty (30) days after a disciplined employee notifies the Carrier Member of the Board, in writing, of his/her desire for expedited handling of his/her appeal, the Carrier Member shall arrange to transmit one copy of the notice of investigation, the transcript of investigation, the notice of discipline and the disciplined employee's service record to the Referee. These documents constitute the record of proceedings and are to be reviewed by the Referee.

In the instant case, this Board has carefully reviewed each of the above-described documents prior to reaching findings of fact and conclusions. Under the terms of the Agreement the Referee, prior to rendering a final and binding decision, has the option to request the parties to furnish additional data; including argument, evidence, and awards.

The Agreement further provides that the Referee, in deciding whether the discipline assessed should be upheld, modified or set aside, will determine whether there was compliance with the applicable provisions of Schedule Rule 40; whether substantial evidence was adduced at the investigation to prove the charges made; and, whether the discipline assessed was arbitrary and/or excessive, if it is determined that the Carrier has met its burden of proof in terms of guilt.

Background Facts

Mr. Charles R. Walker, hereinafter the Claimant, entered the Carrier's service as a Sectionman on or about April 19, 1977. The Claimant was subsequently promoted to the position of Machine Operator and he was occupying that position when he was dismissed from the Carrier's service on September 27, 1991.

The Claimant was dismissed as a result of two investigations which were held on August 29, 1991 in the Roadmasters Office in Bonners Ferry, Idaho. At the investigation the Claimant was represented by the Organization. The Carrier dismissed the Claimant based upon its findings that he had violated Rule 570 for his failure to report for duty on July 8 and July 18, 1991. The Carrier took the Claimant's Personal Record into consideration in assessing the discipline.

Findings of the Board

On August 29, 1991 the Claimant participated in three (3) investigations. These investigations, held consecutively, involved charges that the Claimant had failed to report to work without properly notifying his supervisors on July 8, July 12 and July 18, 1991.

On October 8, 1991, Manager of Gangs W.L. Clark wrote to the Claimant advising him that the Carrier was not assessing any discipline for the Claimant's alleged absence without authority on July 12, 1991. Therefore the Board will not be discussing the investigatory hearing that dealt with the Claimant's absence on July 12, 1991.

The initial investigatory hearing was held on August 29, 1991 at 1:00 p.m. and involved the Claimant's alleged failure to report to duty on July 8, 1991 at Troy, Montana.

At that hearing, Roadmaster Jerry Whetham testified that on July 8, 1991 he was serving as Acting Roadmaster on Roadmaster Gary Nyberg's territory as Roadmaster Nyberg was on vacation. Roadmaster Whetham testified that the Claimant absented himself from his tour of duty on that date and that he, Roadmaster Whetham, did not receive a call from the Claimant requesting such a layoff. Roadmaster Whetham testified that he checked Roadmaster Nyberg's answering machine and that the Claimant had not left a message on that machine advising that he would not be able to work on July 8, 1991. Roadmaster Whetham further testified that the Claimant had not been given permission from any Carrier supervisor to be absent from duty on that date.

The Claimant testified that he drove from his home to Troy, Montana on Sunday, July 7, 1991; that when he arrived at the motel in Troy he learned that there were no available rooms; that, at approximately 1:00 a.m. on the morning of July 8, 1991, he parked his truck at a construction site; that when he attempted to leave that site, he discovered that his truck was "stuck"; that he then slept in his truck; that he was awakened at approximately 5:30 a.m. by Surfacing Gang Foreman Dusek; that he then decided to go to Libby, Montana in order to get his truck towed; that he assumed that Foreman Dusek would advise his (the Claimant's) supervisor about his truck problem; and that when he returned from Libby he elected to stay with his truck until the tow arrived. The Claimant further testified

that he attempted to call Roadmaster Nyberg's office but that no one answered the telephone.

At 4:00 p.m. on August 29, 1991 the Carrier held an investigation concerning the charges against the Claimant for his alleged absence from duty on July 18, 1991 at Bonners Ferry, Idaho.

At this hearing Roadmaster Whetham testified that on July 18, 1991 he was relieving Roadmaster Nyberg who was on vacation. Roadmaster Whetham testified that the Claimant did not report to duty on that date and that the Claimant had not received permission to be absent. Roadmaster Whetham testified that he did receive a message from the trainmaster's secretary that the Claimant had called in at approximately 9:00 a.m. to advise that he had car trouble and would report for work as soon as possible.

The Claimant testified that he was on his way to work when he had trouble with his truck. The Claimant testified that he hitchhiked to Libby where he contacted the trainmaster's office to inform them of his difficulties. The Claimant further testified that he then returned to his truck and spent the next three or four hours repairing that vehicle. The Claimant testified that by the time he completed the necessary repairs to his truck that it was the end of his work day and therefore he did not report to work.

This Board finds that the actions of the Claimant on July 8 and July 18, 1991, in light of his substantial prior disciplinary record involving the same type of offenses, represent the height of irresponsibility. A review of the Claimant's Personal Record discloses that the Claimant has already had numerous disciplines for violating Rule 570. It is clear that those progressive disciplines previously issued by the Carrier have had no impact upon the Claimant. An employee who has an interest in maintaining his employment and, who, as the Claimant testified, prizes highly his responsibility to show up for work at the proper time and place, and, who has already suffered the consequences of progressive discipline because he has not met that responsibility, would have made considerably more effort than did the Claimant to either appropriately call off or to arrive at his job site in a timely manner.

SBA 925
BN & BMW
Case/Award No. 110

The Claimant testified that on July 8, 1991 at approximately 1:00 a.m. in the morning, some five and one-half hours before he was scheduled to report to duty, he knew that his truck was stuck in soft ground. He testified that he made no attempt to rectify that situation so that he could report to duty, but instead he elected to go to sleep. Additionally, he testified that he spoke with Surfacing Gang Foreman Dusek at approximately 5:30 a.m. on the morning of July 8th and that he assumed that Foreman Dusek would advise his (the Claimant's) supervisor of his trouble. The Claimant testified that, although he knew that Foreman Dusek was going to the same worksite that the Claimant was to report to, he elected to stay with his truck instead of riding to work with Foreman Dusek. The Claimant testified that his truck was towed out at approximately 10:30 a.m., but as is clear from the record, he made no attempt to report to work at that hour. Apparently, the Claimant elected to stay with his truck while it was being repaired.

On July 18, 1991, the Claimant again had problems with his truck and again he elected to work on his vehicle and to not report for duty.

It is clear that the Claimant cannot order his priorities. The Carrier has the right to expect its employees to report to duty as scheduled. The Carrier has attempted, through the use of progressive discipline, to educate the Claimant as to his responsibilities. The Claimant is, apparently, unwilling to learn.

Award: The claim is denied. This Award was signed this 20th day of March, 1992.



Richard R. Kasher
Chairman and Neutral Member
Special Board of Adjustment No. 925